



THE CITY OF SAN DIEGO

**CITIZENS' EQUAL OPPORTUNITY COMMISSION
REGULAR BUSINESS MEETING**

**CD of Recorded Minutes available upon request*

MINUTES

**Wednesday, July 7, 2010 - 6 P.M. – 8 P.M.
City Administration Building
Council Committee Room
202 C Street – 12th Floor
San Diego, CA 92101**

Commissioners Present:

Shirley Weber (Chairperson)
Stampp Corbin (Vice Chair)
Juan Gallegos

Brad Barnum
Debbie Day
Ron Cho

Excused/ absent Commissioners: Eileen Chaske, Maurice Wilson

MAYOR'S STAFF:

Debra Fischle-Faulk, Administration Department Director
Laura Davis, Equal Opportunity Contracting Program, WPO

- I. CALL TO ORDER:** The meeting was called to order at 6:10 p.m. by Chairperson Shirley Weber. The meeting was held in the lobby of the City Administration Building as an earthquake rendered the elevators inoperable.
- II. APPROVAL OF MINUTES AND AGENDA:** Agenda was unanimously approved. Minutes from June 2nd, and June 8th, 2010 were unanimously approved.
- III. PUBLIC COMMENT: NONE**

IV. ACTION ITEMS:

- SCOPE Audit Report (Audit Committee Agenda 6/14/10) – Commissioner Corbin reported his attendance at the Audit Committee Meeting of June 14, 2010 where he presented the Commission's position of the City moving forward with a Disparity Study. The Audit Committee voted to move the item to the report to the full City Council for action.
- Local Hiring Preference Program (Tentative Rules Agenda 6/28/10)
- Competition and Transparency in City Contracting Initiative (Councilmember DeMaio ballot initiative) – Initiative failed to qualify for the November ballot
- Energy Efficiency, Health & Safety Standards (Councilmember Emerald proposal) - Unknown as to when this will be brought forward

V. STAFF REPORT: Debra Fischle-Faulk – Director's Program Update for CEOC

- *130 applications received, 55 approved, 67 pending, and 8 denied*
- *Announcement with application posted on City's website*
- *Application posted on P&C's vendor website 6/7/2010*
- *Several notices sent out to City's database and several Caltrans Certified firms*
- *3 notices with application sent out to Minor Construction Program participants*
- *Program Presentations for July were Supplier Diversity Week*
- *Goal Setting Committee established and is having meeting #2 on 7/19/2010*
- *Bid Discount application Spreadsheet developed and being reviewed by P&C*
- *Update given on the Contract Compliance Software Package*
- *Internal Audit Update*
- *Federal/State Funded Projects Update*
- *Labor /Contract Compliance Update*
- *New Main Library Project Update*
- *Councilmember Todd Gloria's Equal Benefits Ordinance Update*
- *Civic Center (New City Hall) ballot initiative Update*

VI. DISCUSSION ITEMS:

- *Chair Weber reported that the Program Manager for EOC Interviews took place and a decision will be concluded soon.*
- *Local Hiring Policy and Prevailing Wage Memo to Mayor & City Council was reviewed. (Handouts Provided)*
- *There was significant discussion regarding the proposed Local Hire Program issues (lack of staff for monitoring, requirements, effects on other programs, and definition of "Local").*

MOTION: For Commission Chair Shirley Weber to represent the Commission at the July 12, 2010 City Council meeting and the Commission's issues/position on the Local Hiring Program Ordinance. The Commission has concerns regarding the necessity of the ordinance, how enforcement would be implemented, how monitoring might be achieved and the impact on staff. (Letter Attached)
Motion Carries Unanimously by the Commission.

VII. SUBCOMMITTEE REPORT: NONE

VIII. COMMISSIONERS ANNOUNCEMENTS:

- *New Commissioner Approved by Council: Mike Oliver of the Disabled Veterans Organization.*

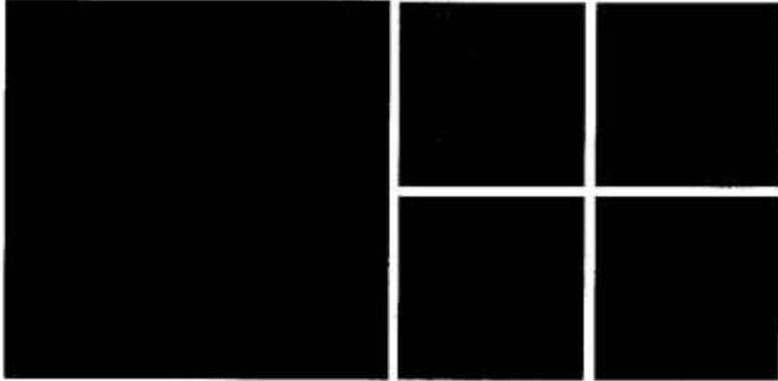
IX. CHAIR'S REPORT: NONE

X. ADJOURMENT: 7:30 P.M

***Materials Provided



- I. Agenda
- II. Minutes of June 2 and June 8, 2010
- III. Staff Report plus attachments

6/29/2010




Equal Benefits Ordinance for the City of San Diego
RULES, OPEN GOVERNMENT AND INTERGOVERNMENTAL RELATIONS COMMITTEE
WEDNESDAY, JUNE 30, 2010

Councilmember Todd Gloria
Council District Three
City of San Diego



Councilmember Todd Gloria
City of San Diego
Third Council District



Equal Benefits Ordinance

Background

In 1997, San Francisco became the first city to implement an Equal Benefits Ordinance (EBO) requiring all contractors doing business with the city to offer employees in a domestic partnership the same benefits offered to married employees.

Today, the State of California has in place an EBO along with several cities and counties throughout the United States:

- Atlanta, GA
- Berkeley, CA
- Broward County, FL
- King County, WA
- Los Angeles, CA
- Miami Beach, FL
- Minneapolis, MN
- Oakland, CA
- Olympia, WA
- Portland, ME
- Sacramento, CA
- Salt Lake City, UT
- San Francisco, CA
- San Mateo County, CA
- Seattle, WA
- Tumwater, WA

6/29/2010



Councilmember Todd Gloria
City of San Diego
Third Council District

EBO Policy Goals

The purpose of an EBO is equal treatment — "Equal pay for equal work."

- A contractor that offers health insurance and other benefits to employees' spouses must offer equivalent coverage to employees' domestic partners.
- An EBO would not require City contractors to begin offering benefits not already offered.
- If a contractor does not offer benefits to married employees, it is not required to offer benefits to employees in domestic partnerships.

The EBO will bring the City's contracting practices in line with non-discrimination laws, prohibiting City contractors from discriminating against employees based on sexual orientation and marital status. Employees of City contractors shall be paid the same total compensation (i.e. have the same access to benefits), regardless of whether the employee's household is organized around his or her marriage or domestic partnership.



Councilmember Todd Gloria
City of San Diego
Third Council District

What does the Equal Benefits Ordinance require?

This law would require that City contractors who provide benefits to employees with spouses to provide the same benefits to employees with domestic partners.

If a business is not contracting with the City of San Diego, this ordinance would not apply to that business.

6/29/2010



Councilmember Todd Gloria
City of San Diego
Third Council District

What benefits are included?

The Ordinance applies to all benefits offered by an employer. Examples: bereavement leave, family medical leave, medical, dental, and vision benefits, membership or membership discounts, moving expenses, travel and relocation benefits, and retirement plans.

How does the Ordinance define a "domestic partner"?

"Domestic partner" means any two adults, of the same or different sex, who have registered as domestic partners with a governmental entity pursuant to state or local law authorizing this registration, or with an internal registry maintained by the employer of at least one of the domestic partners.



Councilmember Todd Gloria
City of San Diego
Third Council District


What types of agreements are covered by the Ordinance?

The Ordinance covers all City agreements. This includes agreements for grants, services, the purchase of goods, construction, and leases.


The Ordinance applies to the following:

- Any contractor that has an agreement with the City.
- All of the City contractor's other operations located within the City limits, even if those operations are not involved in the City agreement.
- Any of the contractor's operations if it is on property owned by the City, or on property that the City has a right to occupy.
- The contractor's employees located elsewhere in the United States but outside of the City limits if those employees are performing work on the subject City agreement.

6/29/2010



Councilmember Todd Gloria
City of San Diego
Third Council District



What is a covered contractor required to do under the Ordinance?

The Ordinance requires the contractor to:

- Certify that equal benefits will be provided to employees with spouses and to employees with domestic partners.
- Post a copy of the following statement in an area frequented by employees: "During the performance of a contract with the City of San Diego, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners."
- Allow the City access to records so that the City can verify compliance with the Ordinance.



Councilmember Todd Gloria
City of San Diego
Third Council District




Exceptions & Waivers

Waivers may be granted in the following situations:


- The contractor is the only provider of a needed good or service.
- The contractor is the only bidder or contractor willing to enter into an agreement with the City for use of City property.
- The agreement is necessary to respond to an emergency situation that endangers the public health or safety, and no contractor that complies with the law is immediately available.
- The agreement involves specialized litigation as certified by the City Attorney's Office.
- The contractor is a public entity providing a good, service, or access to real property that is not available from any other source.
- The contractor is a public entity and the good or service is necessary to serve a substantial public interest.
- The application of the Ordinance would conflict with the terms or conditions of a grant agreement with a public agency.
- The agreement is essential to the City or the City's residents and no other contractor that complies with the Ordinance is available.
- The agreement is for a bulk purchasing agreement through City, federal, state, or regional entities that reduce the City's purchasing cost.
- The agreement involves the investment of certain types of monies, or instances in which the City will incur a financial loss that would violate its fiduciary duties.

- This Ordinance does not apply to any collective bargaining agreement (CBA) that was in effect prior to the Ordinance becoming applicable to the contractor.

6/29/2010



Councilmember Todd Gloria
City of San Diego
Third Council District



Enforcement


The City of San Diego's Administration Department would be responsible for the enforcement of the EBO.

If the contractor fails to comply with the ordinance:

- The action may be deemed as a material breach of contract;
- Awarding authority may cancel, terminate or suspend, in whole or in part, the contract;
- Monies due or to become due under the contract may be retained by the City until compliance is achieved;
- City may also pursue any and all other remedies lawfully allowed.



Councilmember Todd Gloria
City of San Diego
Third Council District



In summary...

If a company is seeking to enter into a contract with the City of San Diego and...	the law requires...
currently does not provide benefits to any employees	NO CHANGE to your benefits policy
currently provides an employee benefits package that covers employees only (not spouse)	NO CHANGE to your benefits policy
currently provides an employee benefits package that covers employees' spouses	that you offer an EQUIVALENT BENEFITS PACKAGE to employees with a domestic partner

6/29/2010



Councilmember Todd Gloria
City of San Diego
Third Council District

The right thing to do...

San Diego continues to lead in promoting mutual respect and understanding among all people by protecting basic human rights and creating an atmosphere that promotes amicable relationships among all members of our community.

To further San Diego's rich history of civil rights, the City of San Diego should implement an EBO and put the City's purchasing power to work to further equity for all. Through our contracting process, we can assure that companies who choose to do business with the City equalize the total compensation between similarly situated spouses and those with domestic partners.



Councilmember Todd Gloria
City of San Diego
Third Council District

Requested actions

- Committee support for the proposed Equal Benefits Ordinance for the City of San Diego.
- Direct my office, Mayor, City Attorney and IBA staff to prepare an ordinance and the proper amendments to the San Diego Municipal Code for implementation of an EBO and return to full Council for consideration.



THE CITY OF SAN DIEGO

June 28, 2010

Council President Ben Hueso and Honorable Members of the City Council
202 C Street, MS 10A
San Diego, CA 92101

RE: Human Relations Commission Supports Equal Benefits Ordinance

Dear Councilmembers,

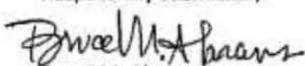
The San Diego Human Relations Commission unanimously supports the full Council consideration and passage of the Equal Benefits Ordinance for the City of San Diego.

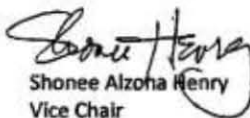
The Commission supports all efforts to bring the City's contracting practices in line with non-discrimination laws. The Commission supports requiring City contractors who provide benefits to employees with spouses to also provide the same benefits to employees with domestic partners.

The purpose of this Equal Benefits Ordinance is equal treatment. San Diego must continue its leadership in promoting mutual respect and equal treatment for all members of our community. Through our contracting process we can assure that companies doing business with the City provide equal compensation between similarly situated spouses and those with domestic partners.

Thank you for your consideration and support of this Ordinance.

Respectfully submitted,


Bruce M. Abrams
Chair


Shonee Alzona Henry
Vice Chair


Danell Scarborough
Executive Director

Cc: Mayor Jerry Sanders



Human Relations Commission
Civic Center Plaza • 1200 Third Avenue, Suite 1300 • San Diego, CA 92101
Tel (619) 236-6420 Fax (619) 236-6423

RULES JUN 30 2010 #2



**OFFICE OF COUNCILMEMBER TODD GLORIA
COUNCIL DISTRICT THREE**

MEMORANDUM

DATE: June 10, 2010
TO: Mayor Jerry Sanders
City Attorney Jan Goldsmith
Council President Ben Hueso
FROM: Councilmember Todd Gloria, Third Council District *Todd Gloria*
SUBJECT: Equal Benefits Ordinance

Background

In 1997, San Francisco became the first city to implement an Equal Benefits Ordinance (EBO) which requires all contractors doing business with the city to offer employees in a domestic partnership the same benefits offered to married employees.

Today, the State of California has in place an EBO along with several cities and counties throughout the United States:

- | | |
|----------------------|------------------------|
| - Atlanta, GA | - Olympia, WA |
| - Berkeley, CA | - Portland, ME |
| - Broward County, FL | - Sacramento, CA |
| - King County, WA | - Salt Lake City, UT |
| - Los Angeles, CA | - San Francisco, CA |
| - Miami Beach, FL | - San Mateo County, CA |
| - Minneapolis, MN | - Seattle, WA |
| - Oakland, CA | - Tumwater, WA |

Policy Goal

The purpose of an EBO is equal treatment. To comply with such a law, a contractor that offers health insurance and other benefits to employees' spouses must offer equivalent coverage to employees' domestic partners. An EBO would not require City contractors to begin offering benefits not previously offered. If a contractor does not offer benefits to married employees, it is not required to offer benefits to employees in domestic partnerships.

The intent of an EBO is to bring the City's contracting practices in line with non-discrimination laws, prohibiting City contractors from discriminating against employees based on sexual

orientation and marital status. The policy goal is "equal pay for equal work." Employees of City contractors shall be paid the same total compensation (i.e. have the same access to benefits), regardless of whether the employee's household is organized around his or her marriage or domestic partnership.

Recommendation

Attached is a summary of the Equal Benefits Ordinance I propose. I request that this issue be docketed for City Council discussion and consideration. Additionally, I seek the City Attorney's leadership and guidance in bringing forth amendments to the appropriate sections of the San Diego Municipal Code for implementation of an EBO.

San Diego continues to lead in promoting mutual respect and understanding among all people by protecting basic human rights and creating an atmosphere that promotes amicable relationships among all members of our community. To further San Diego's rich history of civil rights, the City of San Diego should implement an EBO and put the City's purchasing power to work to further equity for all. Through our contracting process, we can assure that companies who choose to do business with the City equalize the total compensation between similarly situated spouses and those with domestic partners.

I look forward to working with you on this endeavor.

TG:pi

**CITY OF SAN DIEGO
EQUAL BENEFITS ORDINANCE**

This Equal Benefits Ordinance (EBO) requires that City contractors who provide benefits to employees with spouses must provide the same benefits to employees with domestic partners.

Applicability

This Ordinance covers all City contracts. This includes agreements for grants, services, the purchase of goods, construction, and leases.

This Ordinance applies to the following:

- Any contractor that has an agreement with the City.
- All of the City contractor's other operations located within the City limits, even if those operations are not involved in the City agreement.
- Any of the contractor's operations if they are on property owned by the City, or on property that the City has a right to occupy.
- The contractor's employees located elsewhere in the United States but outside of the City limits if those employees are performing work on the subject City agreement.

This Ordinance requires the contractor to:

- Certify that equal benefits will be provided to employees with spouses and to employees with domestic partners.
- Post a copy of the following statement in an area frequented by employees: "During the performance of a Contract with the City of San Diego, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners."
- Allow the City access to records so that the City can verify compliance with the Ordinance.

This Ordinance applies to all benefits offered by an employer. This includes, for example, bereavement leave, family medical leave, medical, dental, and vision benefits, membership or membership discounts, moving expenses, travel and relocation benefits, and retirement plans.

Exceptions & Waivers

Waivers may be granted in the following situations:

- The contractor is the only provider of a needed good or service.
- The contractor is the only bidder or contractor willing to enter into an agreement with the City for use of City property.
- The agreement is necessary to respond to an emergency situation that endangers the public health or safety, and no contractor that complies with the law is immediately available.
- The agreement involves specialized litigation as certified by the City Attorney's Office.
- The contractor is a public entity providing a good, service, or access to real property that is not available from any other source.
- The contractor is a public entity and the good or service is necessary to serve a substantial public interest.
- The application of the Ordinance would conflict with the terms or conditions of a grant agreement with a public agency.

- The agreement is essential to the City or the City's residents and no other contractor that complies with the Ordinance is available.
- The agreement is for a bulk purchasing agreement through City, federal, state, or regional entities that reduce the City's purchasing cost.
- The agreement involves the investment of certain types of monies, or instances in which the City will incur a financial loss that would violate its fiduciary duties.

This Ordinance does not apply to any collective bargaining agreement (CBA) that was in effect prior to the Ordinance becoming applicable to the contractor. However, in order to contract with the City, the contractor must agree that if the CBA is subsequently amended, extended, or otherwise modified, the contractor will propose to the union that the requirements of the Ordinance be incorporated into the CBA. If the contractor agrees to do so, the contractor may be granted Provisional Compliance status allowing the contractor to begin working on the City agreement. When the Provisional Compliance status expires, the contractor must verify for the City the steps taken to come into compliance with the EBO.

Enforcement

The City of San Diego's Administration Department would be responsible for the enforcement of the EBO.

If the contractor fails to comply with the ordinance:

- The action may be deemed as a material breach of contract;
- Awarding authority may cancel, terminate or suspend, in whole or in part, the contract;
- Monies due or to become due under the contract may be retained by the City until compliance is achieved;
- City may also pursue any and all other remedies lawfully allowed.

MARY JO LANZAFAME
ASSISTANT CITY ATTORNEY

SANNA R. SINGER
DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

Jan I. Goldsmith
City Attorney

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

July 7, 2010

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

LOCAL HIRE PROGRAM: FOLLOW-UP LEGAL ANALYSIS

INTRODUCTION

At the April 28, 2010 hearing of the City Council's Rules, Open Government and Intergovernmental Relations Committee (Rules Committee), this Office presented a draft ordinance that would require contractors to endeavor to hire locally for public works projects (Local Hire Ordinance). The draft Local Hire Ordinance included advisory goals for local workers and veterans, but specified that there was no penalty for not meeting the goals and provided that contractors retained ultimate discretion in employment decisions. This Office recommended against mandatory goals as potentially unconstitutional under article IV, section 2, clause 1 of the U.S. Constitution (Privileges and Immunities Clause). See Report to Rules Committee dated April 22, 2010, entitled "Local Hire Program: Legal Issues and Draft Ordinance." City Att'y Report 2010-15 (Apr. 22, 2010) (RC-2010-15).

The Rules Committee moved to forward the draft Local Hire Ordinance to the City Council for consideration with the following modifications: (1) the ordinance would include an 80 percent goal for local workers and 10 percent goal for disadvantaged and/or veteran workers¹; and (2) there would be no penalty for failing to meet the goals, but if a contractor committed to reaching the goals at the time of bid, the contractor would receive a 20 percent bid discount. We provide follow-up legal analysis of the Rules Committee's revisions below.

DISCUSSION

I. CONSTITUTIONALITY OF 20 PERCENT BID DISCOUNT

As discussed in the April 22, 2010 Report, programs that require contractors to employ a local workforce are legally problematic under the Privileges and Immunities Clause of the Federal Constitution, which prohibits a state from discriminating between its residents and non-

¹ The Rules Committee specified that the 10 percent goal could be achieved through the employment of veteran workers, disadvantaged workers, or a combination of both. A "disadvantaged worker" is defined as an individual whose primary residence is and has been within the City of San Diego for at least three months and: (a) has been unemployed for at least six months; (b) resides within a zip code containing at least part of one census tract with lower than the average median income; or (c) falls within the definition of "Section 3 resident" under the Housing and Urban Development Act of 1968.

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

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July 7, 2010

residents without a "substantial reason" for doing so. U.S. Const. art. IV, § 2, cl. 1; *United Bldg. and Const. Trades Council of Camden County and Vicinity v. Mayor and Council of City of Camden*, 465 U.S. 208, 222 (1984). Specifically, a public agency would have to show that non-residents "constitute a peculiar source of evil at which the statute is aimed" in order for a mandatory local hire ordinance to withstand constitutional challenge. *Id.* at 222, citing *Toomer v. Witsell*, 334 U.S. 385, 398 (1948). See RC-2010-15 at 1-5.

Although it does not expressly require local hiring, the Committee's inclusion of a 20 percent bid discount may still violate the Privileges and Immunities Clause. The current draft ordinance does not mandate that contractors employ local residents in certain percentages, but it does provide a significant advantage – in the form of a 20 percent bid discount – for doing so. While no cases address this exact framework, a court may find that a significant bid discount has the same practical effect as imposing a penalty for failing to meet certain goals, and is therefore unconstitutional under *Camden* and its progeny. See, e.g., *Connerly v. State Personnel Board*, 92 Cal. App. 4th 16, 34 (2001) (holding that assuring the participation of a certain percentage of one group is tantamount to discriminating against another). See also *Coalition for Economic Equity v. Wilson*, 122 F.3d 692, 702 (1997) (holding that, in the equal protection context, racial or gender classifications have the same legal significance whether in the form of a benefit or a burden).

We have attempted to reduce this risk by including a provision in the ordinance stating that, when determining local hire percentages, out-of-state residents shall be excluded from the calculation. In the *Camden* case, the Court left open the possibility that excluding out-of-state residents from such calculations would eliminate the Privileges and Immunities problem. *Camden* 465 U.S. at 217 (holding that New Jersey residents living outside of Camden would "have no claim under the Privileges and Immunities Clause"). See also *City of Cleveland v. Ohio*, 508 F.3d 827, 848 (6th Cir. 2007) (finding that Cleveland Local Hire statute did not discriminate against out-of-state workers because they were excluded when calculating the 20 percent Local Hire mandate). That said, it is uncertain whether a court will uphold an otherwise impermissible program on the basis that out-of-state residents are excluded from local hire calculations. The only way to eliminate this risk completely is by striking the bid discount provision from the ordinance. This a policy decision left to the City Council.

II. SAN DIEGO CHARTER RESTRICTIONS

At the April 28 hearing, this Office informed the Rules Committee that the San Diego Charter also places restrictions on the proposed Local Hire Ordinance. As previously advised in connection with the City's recently-adopted Small and Local Business Enterprise (SLBE) Program, the San Diego Charter requires the award of a construction contract to the "lowest responsible and reliable bidder" if the contract exceeds a sum established by the City Council by ordinance. San Diego Charter § 94; see also Report to the Rules Committee dated May 20, 2009, entitled "Legal Options for Small or Local Business Preference Programs." City Att'y Report 2009-9 (May 20, 2009) at 3-6.

The proposed Local Hire Ordinance contains a bid discount for achieving local hiring goals, thus it permits award to other than the lowest responsible and reliable bidder. Therefore, the City Council must cap the program at a specific dollar amount in order to comply with

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

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July 7, 2010

San Diego Charter section 94. The draft ordinance caps the applicability of the program to contracts up to a dollar amount to be determined by the City Council.²

III. INTERACTION WITH SLBE PROGRAM

At the April 28 hearing, the Mayor's staff requested that the Rules Committee consider the interaction between the SLBE Program and proposed Local Hire Ordinance in order to ensure consistency and the effectiveness of both programs. The SLBE Program, which takes effect on July 1, 2010, provides for sheltered competition for minor public works contracts and grants small and local businesses a 5 percent bid discount on major public works contracts up to \$1 million.

In order to preserve the intent of the SLBE Program (i.e., to provide small and local businesses with a competitive edge in public works contracts), the Local Hire Ordinance only applies to major public works contracts and the 20 percent bid discount will be in addition to any discount received under the SLBE Program. This would preserve the minor public works program as set forth in the SLBE ordinance, and maintain the 5 percent bid advantage for small and local firms bidding on major public works contracts. However, it is the City Council's policy decision whether to retain or revise these modifications.

CONCLUSION

As drafted, the Local Hire Ordinance reflects the Rules Committee's direction with the modifications previously discussed. However, the 20 percent bid discount may still be unconstitutional under the U.S. Privileges and Immunities Clause. To reduce this risk, the ordinance includes a provision excluding out-of-state residents from local hire percentage calculations, but the only way to eliminate the risk entirely is to remove the bid discount. In order to comply with San Diego Charter section 94, the applicability of the Local Hire Ordinance must be capped at a specific dollar amount to be determined by the City Council. To ensure consistency with the goals of the SLBE program, the Local Hire Ordinance is limited to major public works contracts, and specifies that the 20 percent bid discount will be in addition to any discount received under the SLBE Program; it is a policy decision for the City Council whether to retain or revise these modifications.

Respectfully submitted,

By

Sarna R. Singer
Deputy City Attorney

SRS:amt
RC-2010-27

² This Office cautions that a dollar threshold far in excess of most City-funded construction projects could be construed as an attempt to contravene the general intent of Charter section 94, which is to award construction contracts to the lowest responsible and reliable bidder.

CITY OF SAN DIEGO
MEMORANDUM

DATE: June 29, 2010
TO: Council President Ben Hueso and Members of the City Council
FROM: Debra Fischle-Faulk, Director, Administration Department
SUBJECT: Local Hiring Policy and Prevailing Wage
REFERENCE: Memo dated April 22, 2010 from Council Members Donna Frye and Todd Gloria, same subject

The following is in response to information requested in the memo referenced above.

1. What percentage of fiscal year 2009 and 2010 City projects require the payment of prevailing wages? Please identify those projects.

Response: In Fiscal Year 2009, a total of 74 projects were awarded of which 22 (30%) required payment of prevailing wages. For Fiscal Year 2010, to date, a total of 56 projects have been awarded of which 14 (25%) require payment of prevailing wages. Attachment 1 lists the projects and dollar values. An employee/number of hours worked count was conducted on a sampling of these contracts which is included as Attachment 2.

In addition, based on a sampling of contracts awarded between FY08-FY10, 87.5% of the contract dollars were awarded to prime contractors located in San Diego County:

Contract Dollars in SD County:	\$131,104,694
Contract Dollars outside SD County:	\$ 18,734,183
Total Dollars:	\$149,838,877
% Dollars SD County:	87.5%

2. What steps does the City take to monitor compliance with prevailing wage requirements?

Response: Equal Opportunity Contracting Program staff follows the procedures outlined in the City's Labor Compliance Program adopted by City Council and approved by the Department of Industrial Relations December 29, 2009 to monitor compliance with prevailing wage requirements. Attachment 3 lists the procedures included in the Program. In addition, two Department Instructions were issued in November 2009 – DI-2, Certified Payroll review and DI-3, Labor Compliance Interviews (site visits) which are also included.

Council President Hueso and Members of the City Council
Local Hiring Policy and Prevailing Wage
Page 2

3. Which and how many staff positions are currently designated to monitor compliance?

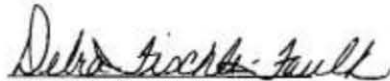
Response: As indicated in the City's approved Labor Compliance Program, there are total of 7 staff positions designated to monitor compliance. The Director of Administration is responsible for the overall oversight of the Program and 6 Compliance Officers (3 of which are Senior Compliance Officers) are conducting the day-to-day duties associated with compliance.

4. What violations, penalties or fines, if any have been identified in fiscal years 2009 and 2010 to date?

Response: To date we have identified and corrected several minor contractor errors. We have recovered back pay totaling \$769 to two employees and ensured the incorrect hourly rates of pay were corrected. In addition, we recently identified a number of potential violations on a large project which could result in penalties and/or fines – at minimum incorrect wages will be corrected and employees will be paid any monies due. For this contract we are conducting a comprehensive labor review. The review is ongoing and the final outcome has not been determined. Finally, staff is working with the City Attorney on a violation for failure to submit required documentation which may result in a fine payable to DAS.

While there are certain violations where civil penalties can be collected and retained by the City (i.e. contractor or subcontractor knowingly violates Apprenticeship requirements, failure to submit certified payrolls as requested), there have been no instances to report at this time.

If you have any additional questions, feel free to contact me at extension 36387.



Debra Fischle-Faulk, Director
Administration Department

cc: Wally Hill, Assistant Chief Operating Officer
David Jarrell, Deputy Chief Operating Officer
Patti Boekamp, Engineering & Capital Projects Director
Hildred Pepper, Purchasing & Contracting Director
Andrea Tevlin, IBA

FY 2009 CONSTRUCTION PROJECTS		
Contract	Project Title	Total Contract Value
K083623C	Seismic Retrofit of the North Harbor Drive Bridge over Estuary	11,216,857.00
K084071DB	Design Build of Vista Terrace Park Playground Upgrade	215,000.00
K084098	Taylor Street Reconstruction	503,622.00
K084155	La Mirada Joint Use Improvements Phase II	398,800.00
K084189C	Trench Restoration of Various Streets Citywide - FY 08	2,350,176.00
K084280C	Fault Crossing Retrofit to Large Pipelines & Landslide	2,138,000.00
K084338	Brown Field Airport Airfield Electrical System Upgrade Ph II & III	1,382,900.00
K094301C	Sewer & Water Group 3011	11,948,422.35
K094442C	Fire Station No. 1 - Remodel	506,953.31
K094467C	Asphalt Overlay Group I, FY '09	9,728,059.72
K094504C	General Requirements Contract 2009 "H"	1,000,000.00
K094618C	East Village - City Heights Building Demolition	107,446.00
M084003	Developed Regional Parks Asphalt Repair	139,450.00
M084118	Windandsea Parking Lot Improvements	182,045.00
M084172	North Torrey Pines Road Bridge over Los Penasquitos Creek	50,000.00
M084191	Linda Vista Library Parking Lot Repair	21,256.00
M084228	Construction of Police Dept Crime Laboratory Forensic Biology	65,418.00
M084290	Removal of Architectural Barriers - Curb Ramp Contract 49	131,600.00
M094589	Construction of Cypress Canyon Rd. MAD, Recycled Water	30,995.00
M094596	Scripps Poway Parkway Maintenance Assessment District	78,660.00
M094612	1449 9th Avenue Plumbing Upgrades	304,027.00
M094613	Construction of 1449 9th Avenue Electrical Upgrades - Sole Source	45,695.00
Prevailing Wage contract count - 22 (30%)		42,545,382.38 (34%)
K083521C	Construction of Sewer and Water Group 676	2,649,028.00
K083817C	Construction of Crown Point Trunk Sewer Project	3,433,453.35
K083932C	Construction of West Miramar Landfill - Phase II - Module E	1,420,063.86
K084024	Construction of Vista Sorrento Parkway Bike Lanes	262,654.50
K084037CA	City Administration Building Elevator Modernization	785,495.00
K084038A	Evan V. Jones Parkade Elevator Modernization and Maintenance	904,005.00
K084077C	Water Group 541	1,896,062.01
K084078	Sewer & Water Group 684A	3,794,220.00
K084222C	Asphalt Overlay Group II, FY 08	8,366,855.04
K084238	Water Group 546	1,622,501.05
K084245C	Work in the Right of Way - Rehabilitation Package G-1	7,072,711.00
K084293A	Pipeline Lateral Rehabilitation - Phase C-3	369,000.00
K084297	Removal of Architectural Barriers - Curb Ramp Contract GF-2	555,555.00
K084303DB	ADA & Title 24 Facility Improvement Projects - Project III	982,891.00
K084304DB	Design Build of ADA & Title 24 Facility Improvements - Project IV	902,738.00
K091323C	Penasquitos Views Trunk Sewer	995,232.00
K092596M	Removal of Fiberglass Surface & Re-Plaster Entire Clairemont	134,000.00
K092601C	Citywide Pump Station Upgrades, Group I - North County SPS	3,689,000.00
K093547CA	Construction of Medians on Scripps Ranch Boulevard	713,534.00
K093810A	Camino de la Plaza Streetscape Improvements	291,010.00
K094112C	Sewer and Water Group 689	3,582,385.75
K094182C	Sidewalk Replacement Group I (Tree Related) FY 09	938,744.30
K094251C	Sewer and Water Group Job 731	1,817,261.50
K094267C	Famosa Accelerated Water and Sewer Main Replacement	3,619,159.25
K094298C	Water Group Job 785	1,600,003.00
K094299C	Sewer Group 725	1,347,370.00
K094305C	Water Main Replacement Group 3008	5,777,000.00
K094318	60th Street Accelerated Sewer	669,303.00
K094321A	5998 Camino de la Costa Storm Drain Replacement	314,200.00
K094364C	Pipeline Rehabilitation Phase H-1	4,824,727.00
K094398C	Sewer and Water Group 747	2,745,000.00
K094406	Street Lighting Circuit Upgrades on Prospect St/La Jolla Blvd	674,580.00
K094443C	Underground Utilities of Block 2E, Phase I	2,130,000.00
K094471C	Slurry Seal Group I, FY '09	4,870,257.54
K094505	East San Ysidro Boulevard Street Lighting System	211,976.00

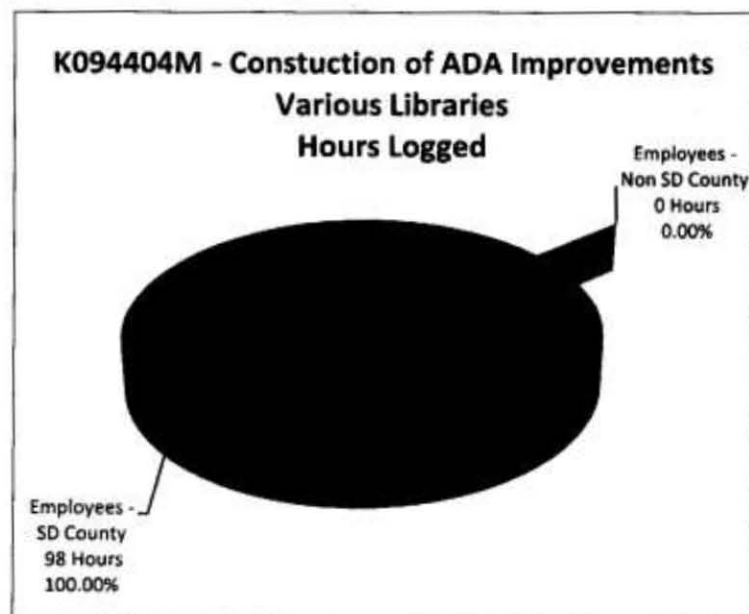
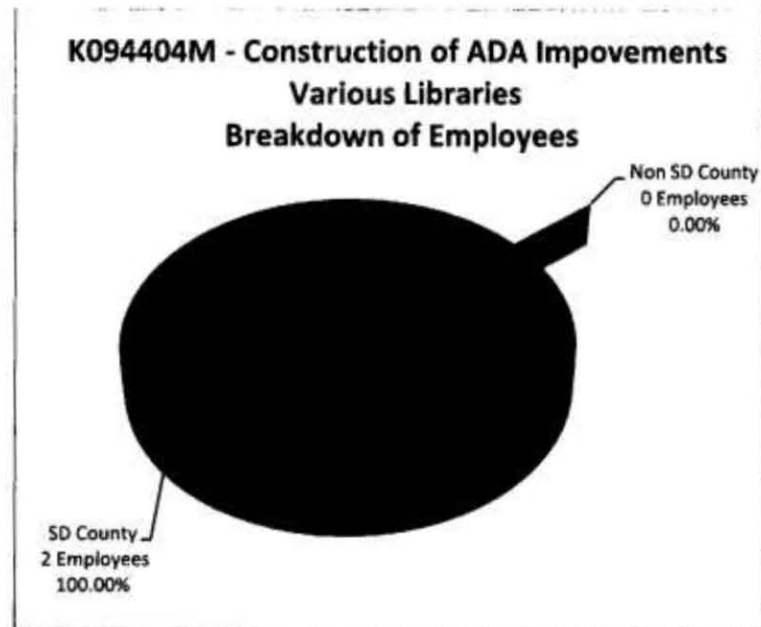
CITIZEN'S EQUAL OPPORTUNITY COMMISSION
Minutes from July 7, 2010

K094511M	Demolition of 1136 Edgemont Street	22,553.00
K094519C	Sewer and Water Group 829	923,226.43
K094579C	Removal of Architectural Barriers - Curb Ramp Contract GF-3	538,450.00
K094626	La Jolla Country Club Reservoir Emergency Repair	250,000.00
K094665M	Kellog Park Playground Demolition	30,980.00
K098491C	Sewer Group 703	2,345,000.00
M084217A	Sidewalk Replacement Group III, FY 08	163,558.00
M084346	Construction of Water Meter Box Replacements - Group I	90,640.00
M084347	Construction of Water Meter Box Replacements - Group II	82,145.00
M084348	Construction of Water Meter Box Replacements - Group III	89,700.00
M093406	Construction of University Ave and Front Street Pop-Out	49,110.00
M094397	Construction Services for Rain Barrells/Downspout Disconnect	42,950.00
M094493	Construction of Penasquitos Towne Center Linear Park	46,944.00
M094530	Via Capri Traffic Calming Project	40,420.00
M094533	Sidewalk Replacement Group V, FY 09 (Tree Related)	134,000.50
M094534	Sidewalk Replacement Group VI, FY 09 (Tree Related)	138,981.00
M094592	Traffic Signal and Street Lighting Systems at Bayside Walk	88,954.00
Non-Prevailing Wage contract count - 52 (70%)		81,039,588.08 (66%)
Grand Total: 74		123,584,970.46

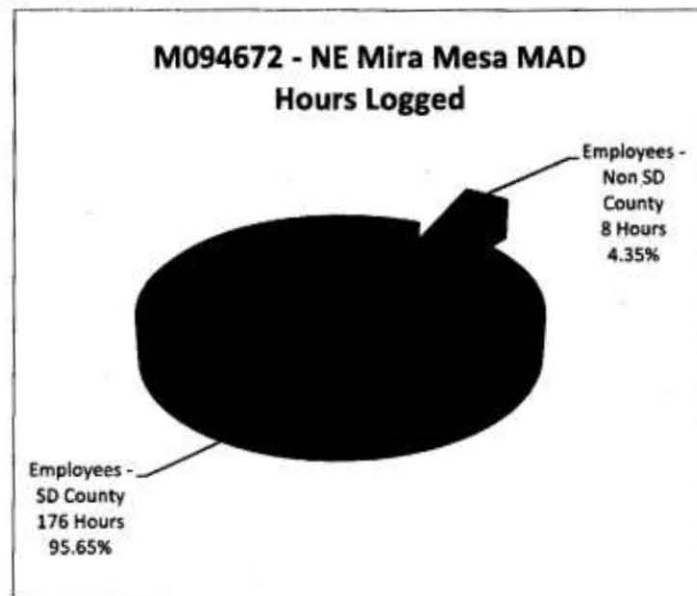
CITIZEN'S EQUAL OPPORTUNITY COMMISSION
Minutes from July 7, 2010

FY 2010 CONSTRUCTION PROJECTS (as of 05-2010)		
Contract	Project Title	Total Contract Value
K092192C	South Mission Valley Trunk Sewer	11,678,955.80
K094371C	Alvarado WTP Phase 3 Flocculation/Sedimentation Basins Rehab	12,250,000.00
K094404M	Construction of ADA Improvements for Clairemont, North Clairemont, Skyline Hills, and University Community Branch Libraries	95,990.00
K101876C	Lake Murray Trunk Sewer	7,903,270.74
K103835	Ransom Street and Darwin Way Storm Drain Replacement	371,115.59
K104456	Birney Elementary School Joint Use Field	438,103.72
K104537	Street Lighting System on University Avenue	193,626.00
M094619	Canyonside Community Park Recycled Water Retrofit	141,200.00
M094636	Campus Point Drive Recycled Water Retrofit	37,070.00
M094645	Eastgate Technology Park, Maintenance Assessment District (MAD) Recycled Water Retrofit Project	66,780.00
M094672	NE Mira Mesa Subarea of Mira Mesa Recycled Water Retrofit	121,815.00
M097083	Potomac Street Sidewalk Improvements	80,836.00
M104925	San Ysidro Streetlights Phase II	104,277.25
M104967	Safe Route to School - Central Elementary School (SR2S)	95,470.00
Prevailing Wage contract count - 14 (25%)		33,578,510.10 (38%)
4538DB	Water Group 790 Design Build	5,397,000.00
K091290C	Sewer Group 715	2,022,730.33
K091456C	Sewer & Water Group 544	2,334,000.00
K092359C	Sewer & Water Group 766	1,209,000.00
K093007	Genesee Avenue/Eastgate Mall Turn Pocket	173,663.00
K094328C	Quincy Street & Wilbur Avenue Sewer Accelerated	1,203,397.00
K094427C	Traffic Signal and Street Lighting Systems For Dayton Street at El Cajon Boulevard and 29th Street at Ocean View Boulevard	229,906.10
K094435C	Water Group 3010	1,899,020.00
K094638	Removal of Architectural Barriers Curb Ramp GF-4	560,920.00
K094646	Removal of Architectural Barriers - Curb Ramp GF-5	515,220.00
K094653M	Birdrock Elementary School ADA Upgrades/Waverly Avenue	118,608.00
K094712	La Playa Storm Drain Repair	395,750.00
K094803	Florida Canyon Storm Drain - Sole Source	600,000.00
K101209CA	Balboa Avenue Trunk Sewer	1,962,939.14
K102909CA	Sewer Group Job 665	1,386,556.46
K104183CA	Sidewalk Replacement Group 1, FY 10 (Tree Related)	666,976.00
K104323	Mesa College Drive Utilities Undergrounding	465,855.00
K104366	Rosecrans & Midway Drive Turn Pockets	242,394.00
K104567	Martin Luther King CP - Play Area Upgrade	401,400.00
K104621	Memorial Park Infiltration	295,904.00
K104648C	Water Group 665	924,274.25
K104664C	Water Group 793	3,189,239.72
K104696C	Water Group 911	1,025,900.00
K104700C	Sewer Main Rehabilitation Phase I-1D	1,862,634.37
K104728C	Sidewalk Replacement Group 2, FY 10	957,977.00
K104729C	Concrete Street Panel Replacement Group I, FY10	658,736.00
K104766	Via Rialto Storm Drain Improvements	435,689.00
K104820C	Sewer Group 745	3,080,000.00
K104823C	Sewer Pipeline Rehabilitation Phase J-1A	3,292,819.75
K104836C	Sewer Rehabilitation Phase J-1	3,193,079.75
K104858C	Asphalt Overlay Group 01, FY '10	8,992,600.00
K104883M	Removal of Fiberglass Liner and Re-Plaster Entire Surface - Kearny Mesa Pool	60,800.00
K104918C	Sewer Main Rehabilitation Phase J-1B	1,655,348.31
K104928C	Pump Station "D" Box Manifold Emergency Replacement Project	663,804.28
K104968M	Removal of Fiberglass Liner and Re-Plaster Entire Surface - Vista Terrace Pool	63,000.00
K108449C	Sewer Group Job 716	3,066,024.99
M094084	Watson Ranch Creek Drain Culvert	72,443.00
M094459	Normal Street Median Improvements	134,119.00
M094668	West Point Loma Boulevard Sidewalk	61,470.00
M104416	47th Street - Street Light Installation	33,789.00
M104853	El Camino Real Flashing Beacons & Landsdale Drive Flashing Beacon	28,000.00
M105008	Garnet Avenue Emergency Storm Drain Pipe Repair	194,965.00
Non-Prevailing Wage contract count - 42 (75%)		55,727,952.45 (62%)
Grand Total: 56		89,306,462.55

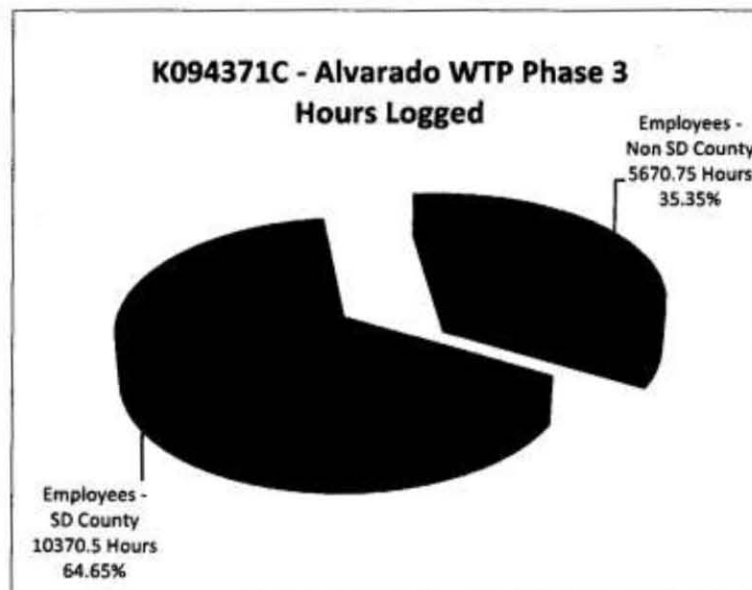
FY 2010 Prevailing Wage Projects



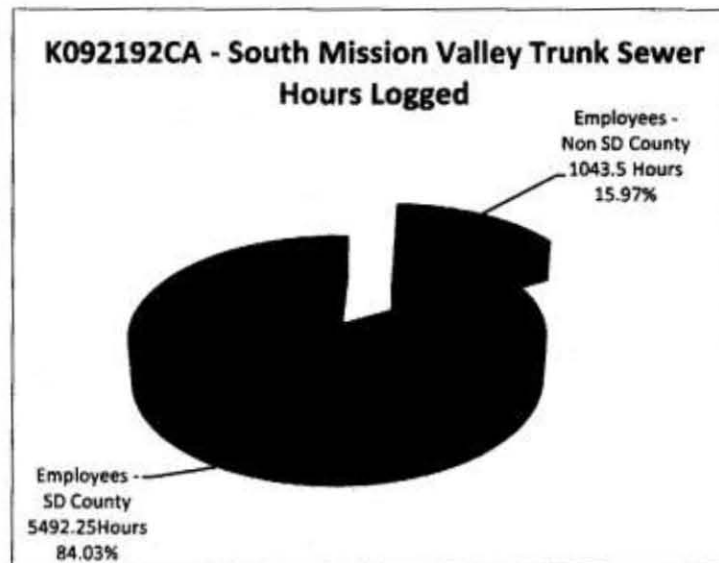
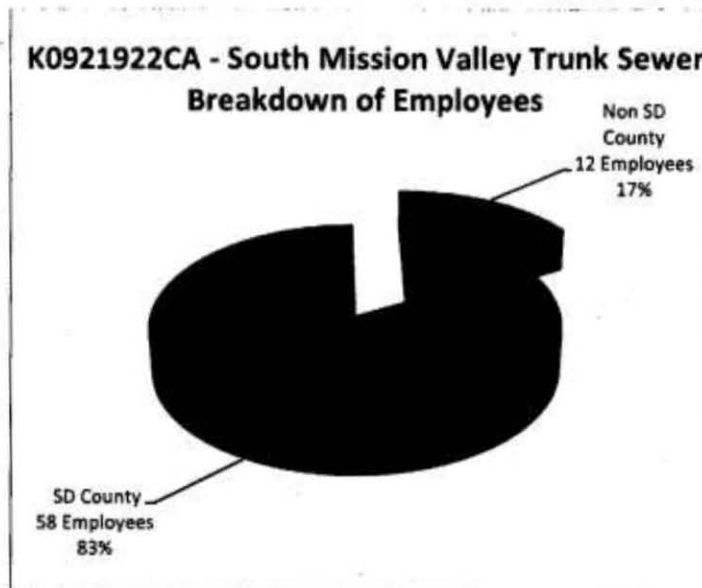
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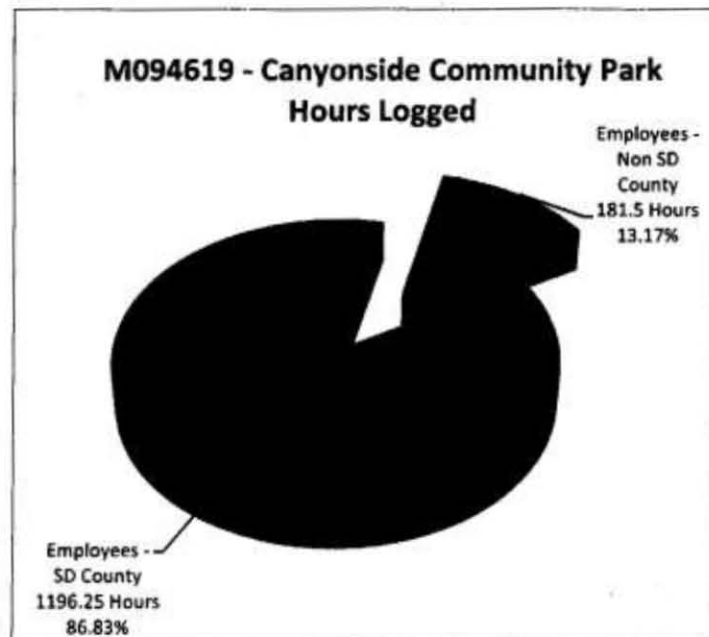
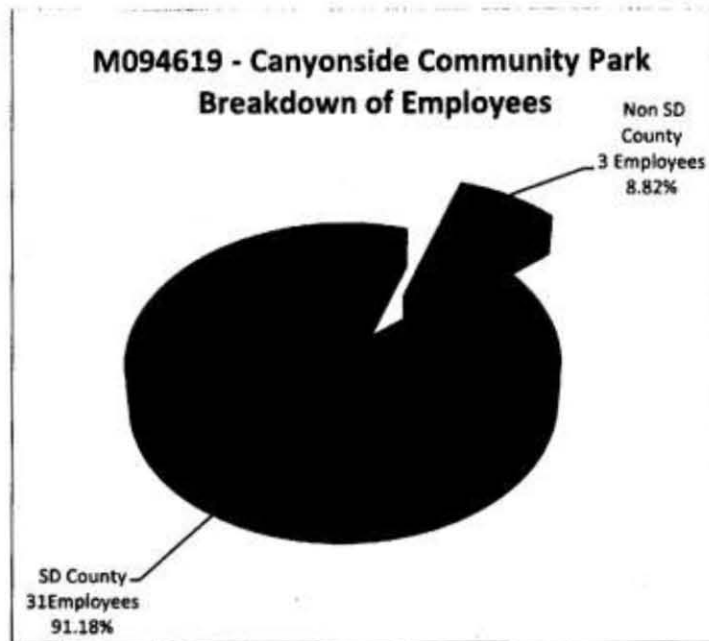
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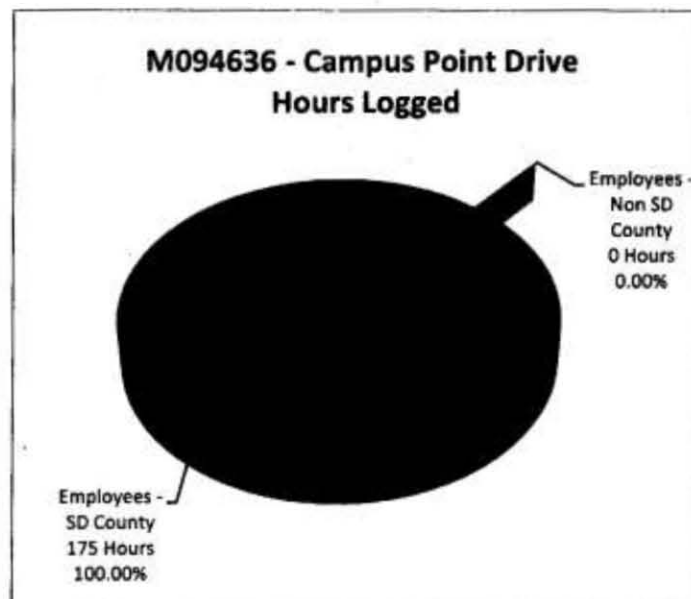
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FY 2010 Prevailing Wage Projects

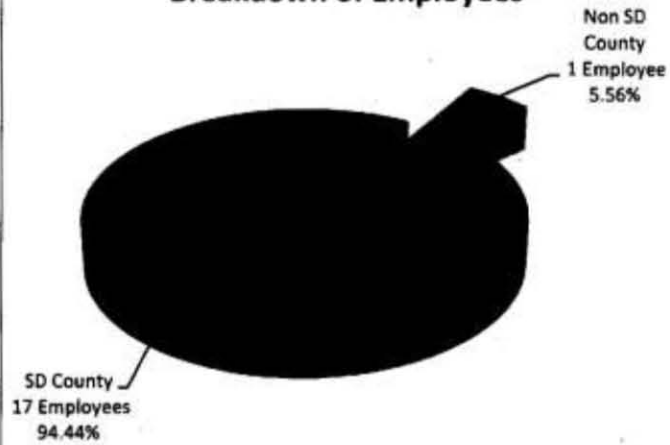


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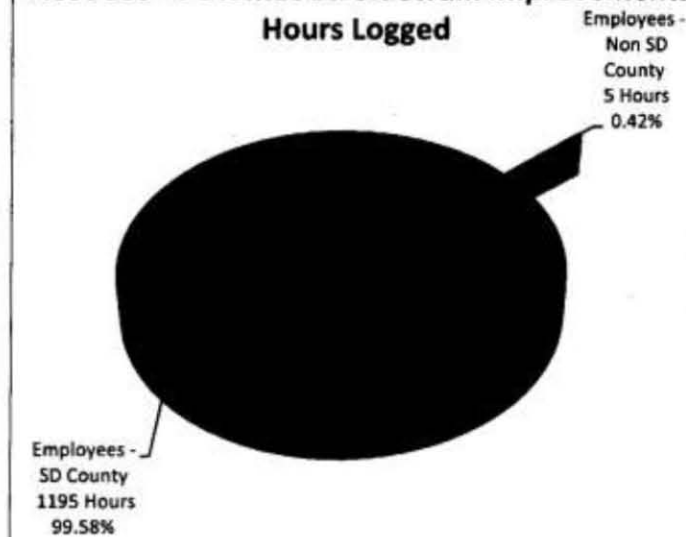


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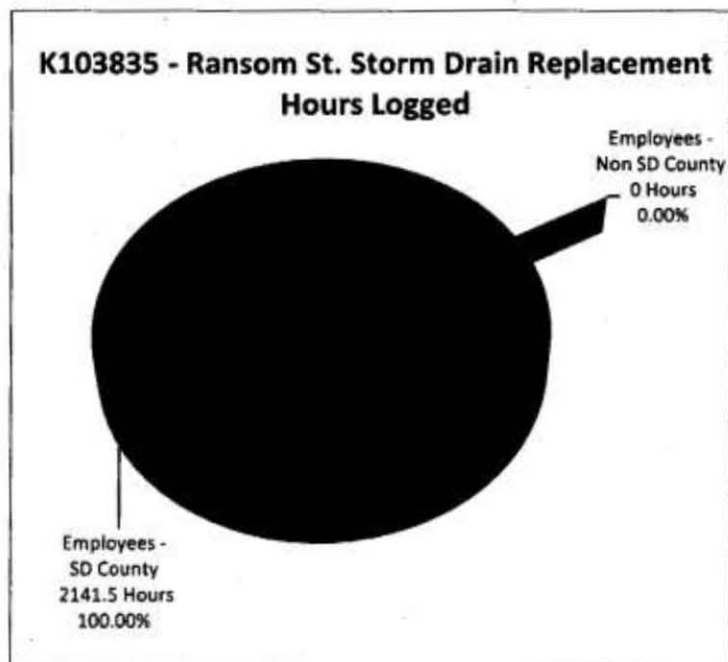
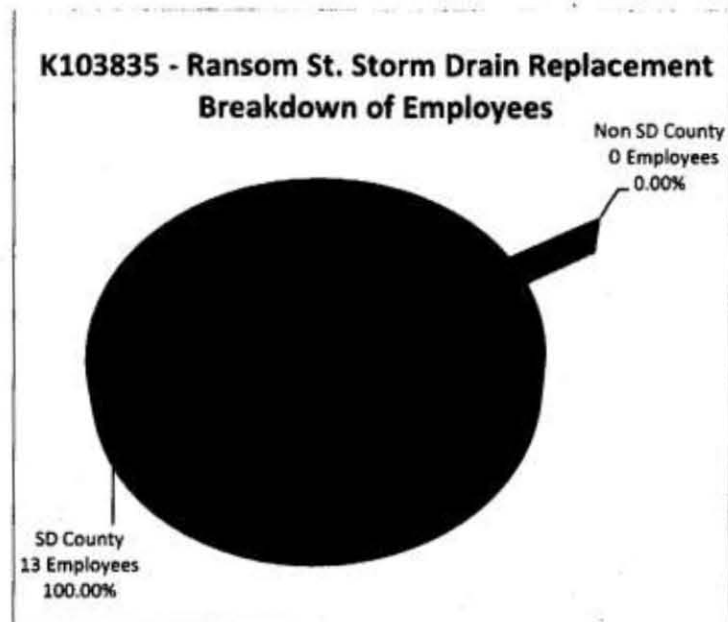
M097083 - Potomac St. Sidewalk Improvements Breakdown of Employees



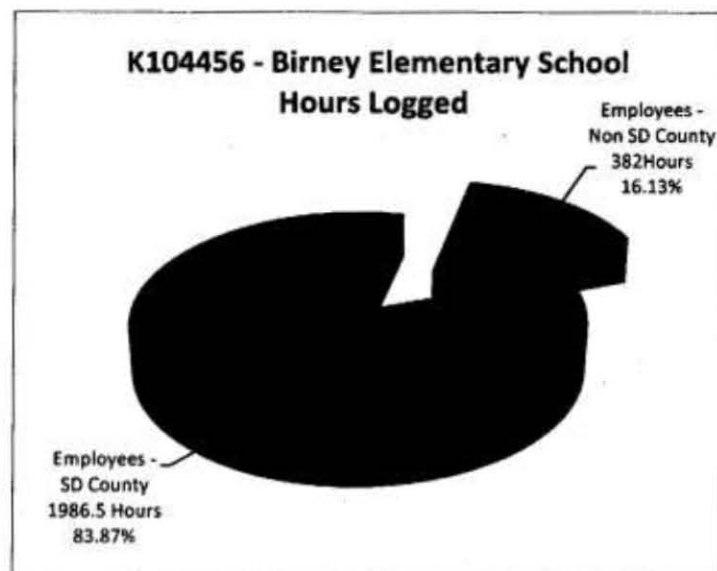
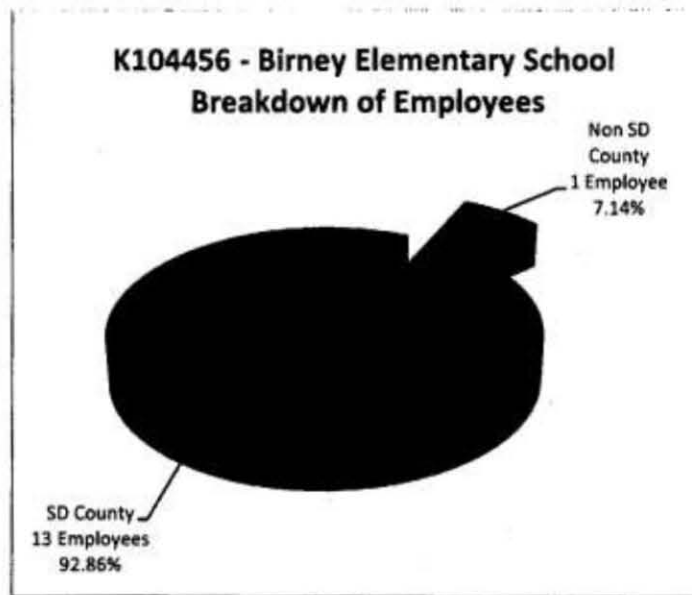
M097083 - Potomac St. Sidewalk Improvements Hours Logged



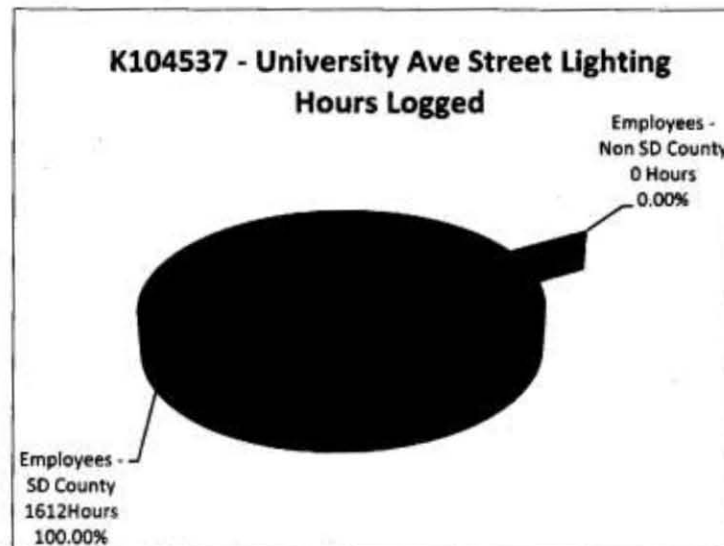
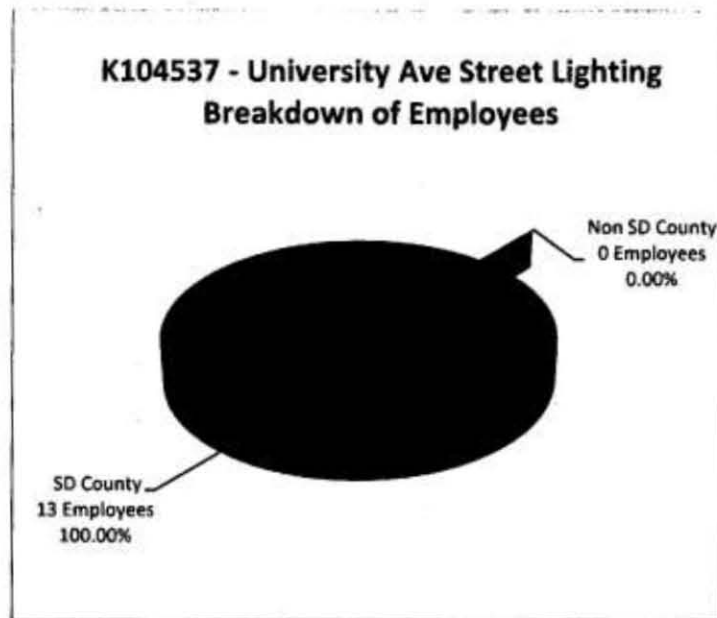
FY 2010 Prevailing Wage Projects



FY 2010 Prevailing Wage Projects



FY 2010 Prevailing Wage Projects



SECTION IV

**CITY OF SAN DIEGO
LABOR COMPLIANCE PROGRAM**

Procedures

SECTION IV

PROCEDURES

Certified Payroll Verification Procedures

1. Various City departments including the Public Utilities Department and Engineering & Capital Projects will provide the Labor Compliance Officers with construction work schedules.
2. Upon receipt of certified payroll reports from prime and subcontractors once a week, Labor Compliance Officers will compare information from employee interviews, Daily Diaries and *Monthly Employee Reports* to the contractors certified payroll reports and the prevailing wage schedule.
3. Labor Compliance Officers will compare name and social security number with trade classification listed.
4. Labor Compliance Officers will ensure prevailing wage listed is correct for the classification listed using the prevailing wage schedule and job descriptions.
5. Labor Compliance Officers will check for employment of apprentices, correct rate of pay for period of apprenticeship and proper hourly ratio to journey workers.
6. Labor Compliance Officers will contact the contractor in writing and send by certified mail any inaccuracies in the verification of its certified payroll.
7. If clarification/correction is not received within two weeks from the contractor, the Labor Compliance Officer will commence an investigation.
8. Upon completion of an investigation, a report will be sent to the Department of Industrial Relations with recommendations for penalties to be applied to the contractor.
9. Labor Compliance Officers will retain all original interview forms and annotate databases as applicable.

Site Monitor Procedures

1. Labor Compliance Officers will receive construction site work schedules from project managers or resident engineers.
2. Labor Compliance Officers will check in with site administrative office/site superintendent.

CITY OF SAN DIEGO, CALIFORNIA	NUMBER	DEPARTMENT
DEPARTMENT INSTRUCTION	DI-2	Administration (EOCP)
SUBJECT	PAGE 1 OF 3	EFFECTIVE DATE
CERTIFIED PAYROLL RECORDS	SUPERCEDES DI- PAGES	11/01/09 DATED

1. PURPOSE

The purpose of this Department Instruction (DI) is to establish procedures to review and monitor Certified Payroll Records (CPRs) to ascertain appropriate pay and classification for workers on a public works project when prevailing wages apply.

2. AUTHORITY

- 2.1 San Diego Municipal Code, Chapter 2, Article 2, Division 27, Equal Employment Opportunity Outreach Program.
- 2.2 City of San Diego *Labor Compliance Program* certified by California Department of Industrial Relations.
- 2.3 California Labor Code 1720 – 1861.

3. POLICY

The City of San Diego is committed to equal employment opportunity and nondiscrimination in contracting pursuant to applicable State and Federal laws and guidelines. The Equal Opportunity Contracting Program seeks to administer public contracts in a manner that is fair and provides equal opportunity to businesses regardless of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability.

4. DEFINITIONS

- 4.1 Certified Payroll Report (CPR) – Formal payroll document listing employees, classifications, hours worked and pay rates; required on prevailing wage projects.
- 4.2 California Division of Apprenticeship Standards (DAS) – State program which oversees California's apprenticeship system.
- 4.3 Prevailing wages – specified wage rates that must be paid on public works construction projects; required on Federally-funded projects over \$2000 and State-funded projects over \$1000.

5. PROCEDURES

<u>Responsibility</u>	<u>Action</u>
5.1 Compliance Officer	Attends Preconstruction Meeting to introduce self and outline requirements for receipt of CPRs.
5.2 Contractor	Submits CPRs to City Resident Engineer for project at frequency requested; each CPR submittal must include signed Statement of

CITY OF SAN DIEGO, CALIFORNIA	NUMBER	DEPARTMENT
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	PAGES	

Compliance and Fringe Benefit Statement; includes subcontractors CPRs after reviewing for completeness and accuracy.

5.3 Resident Engineer

Forwards received CPRs to EOCP.

5.4 EOCP Word Processor

Stamps date of receipt on CPRs and forwards to assigned Compliance Officer.

5.5 Compliance Officer

Enters date of receipt of CPR on log sheet and reviews for the following:

1. Contractors and subcontractors are listed on Monthly Invoicing Report.
2. Statement of Compliance (SOC) is included, accurate, and signed in ink.
3. Fringe Benefit Statement (FBS) is included, accurate, and signed in ink.
4. CPR is legible, includes Contract Number, name, address, Social Security Number, classification and group number, check numbers and deduction description.
5. Correct classifications are used for Federally-funded projects (classification must appear in both Federal and State prevailing wages); Helpers/Tenders/Tradesman classifications must be used appropriately or such classifications are to be paid journey-level wages.
6. Every worker listed in job diaries is included on CPRs.
7. Classification of workers on CPR matches Daily Diaries and Monthly Employment Reports.
8. Salaried (supervisory) employees are listed with classification and number of hours worked.
9. Correct prevailing wages were paid:
 - a. Prevailing wage rate equals the hourly rate plus fringe benefits.
 - b. The gross for a project is the rate of pay times hours worked.

CITIZEN'S EQUAL OPPORTUNITY COMMISSION
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c. Overtime rates (OT) are stated in Determination footnotes for craft.

10. Ratios are met as stated in Determination footnotes for craft.

11. If deductions, authorization letters signed by worker are received.

12. *Public Works Contract Award Information* (DAS 140) forms included.

13. Apprentice ratios are met.

14. Labor Standards Interviews with workers are conducted and verify information received in CPRs.

Follows up to resolve any discrepancies and notifies supervisor of any unusual circumstance or situation that requires management attention.


Debra Fischle-Faulk
Director of Administration

Attachments:

- 1) Sample "Certified Payroll Report"
- 2) Sample "Statement of Compliance (SOC)"
- 3) Sample "Fringe Benefit Statement (FBS)"

Distribution:

- 1) Equal Opportunity Contracting Program Staff
- 2) Engineering and Capital Projects Department Director and Deputy Directors

CITY OF SAN DIEGO

PUBLIC WORKS WEEKLY CERTIFIED PAYROLL REPORTING FORM

Name of Contractor: ABC Lighting Company Business Address: 123 Main Street San Diego, CA 92222 Contractor's License#: 00-111-2222

Employee's Name, Address and Social Security Number	# of withholding exemptions	Work Classification	Hours Worked Each Day							S	O	SDI	Total Hours	Rate of Pay	Gross Amount Earned																													
			M	T	W	Th	F	S	S																																			
John Smith 444 5 th Avenue San Diego, CA 92111 444-55-6666	S-4	Fixture Cleaner	8	8																																								
Deductions, Contributions and Payments												Net Wages Paid for Week:		168.63	Check	12345																												
<table border="1"> <thead> <tr> <th>Federal Tax</th> <th>FICA Soc Sec</th> <th>State Tax</th> <th>SDI</th> <th>Vacation/Holiday</th> <th>Health & Welfare</th> <th>Pension</th> <th>Training</th> <th>Fund Admin</th> <th>Dues</th> <th>Travel/ Subs</th> <th>Savings</th> <th>Other*</th> <th>Total Deductions</th> </tr> </thead> <tbody> <tr> <td>0</td> <td>14.08</td> <td>0</td> <td>1.29</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>15.37</td> </tr> </tbody> </table>												Federal Tax	FICA Soc Sec	State Tax	SDI	Vacation/Holiday	Health & Welfare	Pension	Training	Fund Admin	Dues	Travel/ Subs	Savings	Other*	Total Deductions	0	14.08	0	1.29										15.37					
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Deductions, Contributions and Payments												Net Wages Paid for Week:		409.58	Check	12346																												
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			M	T	W	Th	F	S	S																																			
Juan Gomez 1212 Main Street San Diego, CA 95555 555-66-9999	M-3	Fixture Cleaner	8	8	8	8																																						
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Federal Tax	FICA Soc Sec	State Tax	SDI	Vacation/Holiday	Health & Welfare	Pension	Training	Fund Admin	Dues	Travel/ Subs	Savings	Other*	Total Deductions																															
29.00	36.72	1.34	3.36										70.42																															

I, Mary Jones, the undersigned, am Payroll Clerk with the authority to act for and on behalf of ABC Lighting, certify under penalty of perjury that the records or copies thereof submitted and consisting of 1 are the originals or true, full, and correct copies of the originals which depict the payroll record(s) of the actual disbursements by way of cash, check, or whatever form to the individual or individuals named.

Date: 6/30/00

Signature:

STATEMENT OF COMPLIANCE

Date _____ Payroll Number _____
Bid No. _____

I, _____ do hereby certify under penalty of perjury:
(Name of Signatory Party) (Title)

(1) That I pay or supervise the payment of the persons employed by _____ on
(Contractor or Subcontractor)

_____, that during the payroll commencing on the _____ day of _____,
(Project Title)

20____ and ending the _____ day of _____, 20____, all persons employed on said project have been paid their full weekly wages earned, that no rebates
have

been or will be made either directly or indirectly to or on behalf of said _____ from the full weekly wages earned
(Contractor or Subcontractor)

by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions, as
described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics
contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classification set forth therein
for each laborer or mechanic conform with the work he or she performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS OR PROGRAMS

G In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed
in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

G Each laborer or mechanic listed in the above referenced payroll has been paid as indicated on the payroll, an amount not less than the sum of the
applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION
REMARKS:	
NAME AND TITLE	SIGNATURE

On Federally funded projects, permissible deductions are defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act,
as amended (48 Stat. 948 63 Stat. 108, 72 Stat. 967, 76 Stat. 357, 40 U.S.C. 276c).
Also, the willful falsification of any of the above statements may subject the contractor or subcontractor to civil or criminal prosecution (see Section 1001) of Title 18
and Section 231 of Title 31 of the United States Code).

CITY OF SAN DIEGO
CONTRACTOR FRINGE BENEFIT STATEMENT

Contract Number / Name:	Contract Location:	Today's Date:
-------------------------	--------------------	---------------

Contractor / Subcontractor Name:	Business Address:
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In order that the proper Fringe Benefit rates can be verified when checking payrolls on the above contract, the hourly rates for fringe benefits, subsistence and/or travel allowance payment made for employees on the various classes of work are tabulated below.

Classification:	Effective Date:	Subsistence or Travel Pay: \$ _____
-----------------	-----------------	--

FRINGE BENEFITS	Health & Welfare	\$ _____	PAID TO: Name: _____	Address: _____
	Pension	\$ _____	PAID TO: Name: _____	Address: _____
	Vacation/ Holiday	\$ _____	PAID TO: Name: _____	Address: _____
	Training and/or Other	\$ _____	PAID TO: Name: _____	Address: _____

Classification:	Effective Date:	Subsistence or Travel Pay: \$ _____
-----------------	-----------------	--

FRINGE BENEFITS	Health & Welfare	\$ _____	PAID TO: Name: _____	Address: _____
	Pension	\$ _____	PAID TO: Name: _____	Address: _____
	Vacation/ Holiday	\$ _____	PAID TO: Name: _____	Address: _____
	Training And/or Other	\$ _____	PAID TO: Name: _____	Address: _____

Classification:	Effective Date:	Subsistence or Travel Pay: \$ _____
-----------------	-----------------	--

FRINGE BENEFITS	Health & Welfare	\$ _____	PAID TO: Name: _____	Address: _____
	Pension	\$ _____	PAID TO: Name: _____	Address: _____
	Vacation/ Holiday	\$ _____	PAID TO: Name: _____	Address: _____
	Training And/or Other	\$ _____	PAID TO: Name: _____	Address: _____

Supplemental statements must be submitted during the progress of work should a change in rate of any of the classifications be made.

Submitted: Contractor / Subcontractor	By: Name / Title
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CITY OF SAN DIEGO, CALIFORNIA	NUMBER	DEPARTMENT
DEPARTMENT INSTRUCTION	DI-3	Administration (EOCP)
SUBJECT	PAGE 1 OF 4	EFFECTIVE DATE
LABOR COMPLIANCE INTERVIEWS (SITE VISITS)	SUPERCEDES DI DATED	11/01/09
		N/A

1. PURPOSE

The purpose of this Department Instruction (DI) is to establish procedures to conduct Labor Compliance Interviews on projects with prevailing wage requirements. Site visits and interviews are conducted to observe work being performed, verify posting of mandatory notices, and gather comments from workers on the type of work performed and wages paid.

2. AUTHORITY

- 2.1 San Diego City Council Resolution Number R-298185.
- 2.2 City of San Diego's Labor Compliance Program as certified by the State of California (August 2003).
- 2.3 California Labor Code Sections 1770, *et seq.*, 1771.5(b), 1771.8(a), 1776 and 1777.5, when applicable.
- 2.4 Davis Bacon and Related Acts, Contract Work Hours and Safety Standards Act, and Code of Federal Regulations (CFR) Title 29, Parts 1, 3, 5, 6, and 7, when applicable.

3. POLICY

The City of San Diego is committed to enforcement of applicable Labor Standards regulations on public works projects.

4. DEFINITIONS

- 4.1 Certified Payroll Report (CPR) – Formal payroll document listing employees, classifications, hours worked and pay rates; signed by authorized representative of firm to certify veracity; required weekly on prevailing wage projects.
- 4.2 Copeland Act – Law precludes contractor/subcontractor from inducing an employee to give up any part of entitled compensation; also known as "Anti-Kickback Act."
- 4.3 Davis-Bacon and Related Acts (DBRA) – Federal rules which apply when a state or local agency receives funds from the Federal government which require payment of prevailing wages.
- 4.4 Fringe Benefits – Non-salary employee compensation; may include health insurance, pension, vacation time, etc.
- 4.5 Fringe Benefit Statement (FBS) – required submittal on a prevailing wage job to show how fringe benefits are distributed.

CITY OF SAN DIEGO, CALIFORNIA	NUMBER	DEPARTMENT
DEPARTMENT INSTRUCTION	DI-3	Administration (EOCP)
SUBJECT	PAGE 2 OF 4	EFFECTIVE DATE
LABOR COMPLIANCE INTERVIEWS (SITE VISITS)	SUPERCEDES DI DATED	11/01/09
		N/A

- 4.6 Labor Compliance – Term used to refer to State and Federal laws, regulations and directives, as well as policies and contract provisions, which provide guidance for the payment of applicable general prevailing wage rates and apprentice utilization.
- 4.7 Labor Standards Interview – Interview of an onsite employee working for a contractor performing public works; conducted at a job site; required on prevailing wage projects.
- 4.8 Non-Performance Statement – Report submitted on prevailing wage job by contractor or subcontractor for a week in which no work is performed on the project by that contractor.
- 4.9 Payroll authorization – Authorization by employee allowing contractor to withhold monies from payroll checks; must be in writing.
- 4.10 Prevailing wage – Specified wage rates that must be paid on public works construction projects; required on Federal- and State-funded projects and City-funded projects when specifically required by Council Resolution Number R-298185 or otherwise.
- 4.11 Wage determinations – Specific listing of rate of pay plus fringe benefit amounts for distinct classifications of workers; issued by Division of Labor Standards Enforcement.

5. PROCEDURES

Responsibility

Action

5.1 Compliance Officer

Prior to a site visit, prepares thorough the following actions:

1. Thoroughly reviews project file including recent certified payroll records to determine which trades will be onsite and to identify potential issues.
2. Contacts resident engineer to discuss site selection and specific location, confirm presence of workers at scheduled interview time, and determine special needs, if any, such as language requirements.
3. Schedules specific day and time for site visit with consideration of location and weather (earliest in day is best to ensure presence of workers).
4. Arranges travel method which may include reservation of pool car.
5. Gathers the following mandatory items to perform site visit:
 - Steel-toe boots
 - Safety vest

CITY OF SAN DIEGO, CALIFORNIA		NUMBER	DEPARTMENT
DEPARTMENT INSTRUCTION		DI-3	Administration (EOCP)
SUBJECT		PAGE 3 OF 4	EFFECTIVE DATE
LABOR COMPLIANCE INTERVIEWS (SITE VISITS)		SUPERCEDES DI DATED	11/01/09
			N/A

- Safety goggles
- Hard hat
- Project files
- Interview forms
- Driver's license, City ID card, and City employee number
- City business cards
- Clipboard, pens, pencils
- Pool vehicle rental accounting information
- Phone numbers for EOCP Compliance Officers

5.2 Compliance Officer

Upon arrival at the job site:

1. Considers safety of paramount importance; wears hard hats, steel-toe boots, safety vest, and, if necessary due to conditions, safety goggles; does not enter any area that appears unsafe and exercises reasonable caution at all times.
2. Wears visible picture ID badge.
3. Immediately checks in at contractor's trailer or, if there is no site trailer, at the site's administrative office, with site superintendent to introduce self; states the purpose of visit; signs in, if requested.
 - a) If for any reason access is denied, informs site superintendent that a note of this denial will be made in project file and may be considered a breach of contract.
 - b) If access is denied, promptly leaves site and makes note in project file recording incident.
4. Observes whether the following items are displayed in trailer:
 - Equal Opportunity Employment posters
 - Prevailing wage sheets
 - Sign-in log
 - List of subcontractors for site

If any of these items are not visible, reminds contractor that postings are required by the contract and if items are not found to be posted on subsequent visits, the contractor may be deemed non-compliant.

5.3 Compliance Officer

Uses Labor Compliance Site Visit Interview form (see sample form from California Department of Transportation) to records responses:

CITY OF SAN DIEGO, CALIFORNIA		NUMBER	DEPARTMENT
DEPARTMENT INSTRUCTION		DI-3	Administration (EOCP)
SUBJECT		PAGE 4 OF 4	EFFECTIVE DATE
LABOR COMPLIANCE INTERVIEWS (SITE VISITS)		SUPERCEDES DI DATED	11/01/09
			N/A

1. Asks each interviewee consistent information including: name, social security number, employer, title (trade classification), rate of pay, and task being performed at the time of interview.
2. Asks for a best estimate when an interviewee does not know the exact answer (such as for job classification or wage rate).
3. Respects the wishes of an interviewee who declines to respond or to answer any specific question.
4. Asks additional questions if interviewee is an apprentice including title of apprentice program and apprentice period or length of training.
5. Thanks interviewee sincerely for time spent and assures interviewee of confidentiality.
6. Contacts site superintendent or inspector immediately if an unsafe circumstance is observed but does not interfere with job; if such a situation is observed, notes the circumstance in the project file.

5.4 Compliance Officer

Upon return to office:

1. Files all original interview forms in project wage file by no later than the end of the week during which the interview was conducted.
2. Notes relevant observations from job site into the wage file log.
3. Informs supervisor or EOCP Program Manager if any incidents occurred of which they should be made aware.


Debra Fischle-Faulk
Director of Administration

Attachment: California Department of Transportation Interview Form

Distribution:

- 1) Equal Opportunity Contracting Program Staff
- 2) Engineering and Capital Projects Department Director and Deputy Directors

CITIZEN'S EQUAL OPPORTUNITY COMMISSION
Minutes from July 7, 2010

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

EMPLOYEE INTERVIEW: LABOR COMPLIANCE / EEO
CEM 2504 (REV 6/1999) (Front) CT #7541-3512-3

ADA Notice

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

CONFIDENTIAL

This document contains personal information and pursuant to Civil Code 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

CONTRACT NO.

FED. NO.

INSTRUCTIONS - (SEE REVERSE SIDE)

1. TO BE FILLED IN BY INTERVIEWER (Data may be obtained from payroll records or during source document review)

EMPLOYEE NAME		LABOR CLASSIFICATION
MINIMUM BASE WAGE PER CONTRACT:	BASE RATE	FRINGE BENEFITS
MINIMUM BASE WAGE PER CONTRACT:	BASE RATE	FRINGE BENEFITS
EMPLOYER	PRIME CONTRACTOR ON THE PROJECT (IF SAME, SO STATE)	
WORK BEING PERFORMED AT TIME OF INTERVIEW		

2. QUESTIONS TO BE ASKED OF EMPLOYEE

A. HOW LONG HAVE YOU WORKED FOR YOUR PRESENT EMPLOYER?		HOW LONG ON THIS PROJECT?	
B. DESCRIBE THE TYPE OF WORK YOU HAVE BEEN DOING THIS PAST WEEK			
C. WHAT IS YOUR WAGE (Include Base and Fringe Benefits (Compare to Payroll))			DO YOU KEEP A RECORD OF THE HOURS YOU WORK? <input type="checkbox"/> YES <input type="checkbox"/> NO
D. DO YOU WORK OVERTIME? <input type="checkbox"/> FREQUENTLY <input type="checkbox"/> SELDOM <input type="checkbox"/> NONE	ARE YOU PAID TIME AND ONE-HALF FOR OVERTIME? <input type="checkbox"/> YES <input type="checkbox"/> NO		IF NO, EXPLAIN
E. HAS YOUR EMPLOYER DIRECTED YOUR ATTENTION TO THE REQUIRED WAGE RATE POSTERS ON THE PROJECT? <input type="checkbox"/> YES <input type="checkbox"/> NO		HAVE YOU SEEN THOSE POSTERS? <input type="checkbox"/> YES <input type="checkbox"/> NO	IF NO, EXPLAIN
F. ARE YOU AWARE OF THE CONTRACTOR'S EEO POLICIES? <input type="checkbox"/> YES <input type="checkbox"/> NO	DOES THE CONTRACTOR HOLD REGULAR EEO MEETINGS? <input type="checkbox"/> YES <input type="checkbox"/> NO	HOW OFTEN?	
WHO CONDUCTS THE MEETINGS?	WHO IS THE EEO OFFICER FOR YOUR EMPLOYER?	WHO IS THE EEO OFFICER FOR THE PROJECT?	
G. ARE YOU INTERESTED IN / OR HAS YOUR EMPLOYER INFORMED YOU OF UPGRADING AND TRAINING POSSIBILITIES? <input type="checkbox"/> YES <input type="checkbox"/> NO			IF YES, PLEASE EXPLAIN

3. ADDITIONAL QUESTIONS FOR OWNER OPERATORS

A. EQUIPMENT DESCRIPTION		TRUCK LICENCE NO.	TRUCK CA #
HOURLY RATE (Fully operated and maintained) \$	BASE EQUIPMENT RATE \$	ON WHAT DO YOU BASE YOUR EQUIPMENT RENTAL RATE? <input type="checkbox"/> HOURLY <input type="checkbox"/> WEEKLY <input type="checkbox"/> MONTHLY	
B. DO YOU OWN THE EQUIPMENT? <input type="checkbox"/> YES <input type="checkbox"/> NO		MAY I SEE YOUR CERTIFICATE OF OWNERSHIP? (Interviewer Note Response)	
LEGAL OWNER		REGISTERED OWNER	

4. EMPLOYEE COMMENTS

DO YOU HAVE ANY COMMENTS OR COMPLAINTS ABOUT WAGES OR EEO POLICIES? BE SPECIFIC:

5. INTERVIEWER'S COMMENTS

NAME OF INTERVIEWER (PRINT)

DATE

NAME OF RESIDENT ENGINEER (PRINT)

DATE

SIGNATURE OF INTERVIEWER

SIGNATURE OF RESIDENT ENGINEER

CITY OF SAN DIEGO
Equal Opportunity Contracting
Director's Program Update for Citizens Equal Opportunity Commission
June 8, 2010/July 7, 2010

Small Local Business Enterprise Program – Effective 7/01/10

•Application workshops:

*4/08/10, Mayor's Initial Announcement Balboa Park Club
5/19/2010, Balboa Park Club Bidders Symposium
5/25/10 Tubman Chavez Multicultural Center
6/01/10 DVBE Meeting, Balboa Park Veterans Building
6/02/10 Subs for Subs, Balboa Park Club
6/03/10 Turner School of Construction Management Airport Authority Facilities
Maintenance Building
6/04/10 City protégés, War Memorial Building
7/20/10 Asian Business Association Meeting*

- ▶ 130 applications received, 55 approved 67 pending 8 denied***
- ▶ Announcement with application posted on City's website***
- ▶ Application posted on P&Cs vendor website 6/07/10***
- ▶ Several notices sent out to City's database and several Caltrans certified firms***
- ▶ 3 notices with application sent out to Minor Construction Program participants***

•Program Presentations:

*Radio coverage on SBAs station
4/09/10 Consultant Group Presentation
4/14/10 Public Agency Consortium (PAC) meeting
5/26/10 Consultant Group Presentation
5/27/10 Mtg. w/ President SD Regional Minority Supplier Development Council
6/10/10 Presentation to Construction Industry
7/28/10 Supplier Diversity Week*

- Goal Setting Committee established- 2nd meeting 7/19/10***
- Bid discount application spreadsheet developed being reviewed by P&C***
- Bid specifications drafted and approved***
- good faith documents finalized – using Caltrans forms***
- A&E consultant input meetings 4/09/10,***
- General Requirements Contracts – additional smaller contracts identified for SLBEs only***
- Joint Effort with Asian Business Association – How to do Business with City and SLBE***
- Application Workshop – 5/18/10, Scripps Ranch Library – rescheduled for July at request of Asian Business Association***
- Prior Minor Construction Program sunset – new SLBE Program for small contracts applies***

Contract Compliance Software Package

- Historical data loaded, working on FY2010 data***
- Labor Compliance, Contract Compliance, and Vendor Compliance modules loaded***
- Training held 6/15 & 6/16***

•Contractor training late July, early August (firm searches, payroll submittals, monthly report submittals)

•Certification module to be loaded in early August

•Loaded data demonstration – 04/08/10

•Weekly conference calls and data sharing

•Configuration complete

Internal Audit

•Complete, corrective actions begun.

•Presented at 6/14/10 Audit Committee meeting

•Vice Chair Corbin attended and addressed Committee

Federal/State Funded Projects

•Caltrans, SCOPe goal calculation review meeting August

•Several reports due July and August – gathering data

•Prepared and submitted required program, annual and project-by-project goals to FAA

•EPA, CDBG, FHWA, CALTRANS, FEMA and Clean Water State Revolving Fund (CWSRF) programmatic goals have updated and included in bid specs.

•HUD Annual Report for period 1 submitted to CDBG staff

Labor /Contract Compliance

•fine assessed \$2,695 – unlisted sub

•Recovered \$60,000 sub payment based on final summary report review

•Identified & investigating potential documentation falsification issues

•Weekly staff meetings to review projects, site visits, etc.

•Issues being identified and addressed (i.e. missing payrolls, recent employee complaint)

•Conducting compliance audit on large project – identified underpaid employees

Other

•New Main Library Project approved with 20-30% goals

•Council member Todd Gloria's Equal Benefits Ordinance

•Civic Center (New City Hall)ballot initiative